

CGB-CC-0949

FILED/ACCEPTED

DEC 24 2009

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

CLOSED CAPTIONING et al.)
)
Petition for Exemption and/or Waiver of)
San Fernando Cathedral of San Antonio, Texas)

To: Secretary

PETITION FOR EXEMPTION AND/OR WAIVER

Robert Lewis Thompson
SMITHWICK & BELENDIUK, PC
5028 Wisconsin Ave., NW #301
Washington, DC 20016
(202) 363-4409
bthompson@fccworld.com

December 23, 2009

PETITION FOR EXEMPTION AND/OR WAIVER

San Fernando Cathedral of San Antonio, Texas ("SFC") or "Church" respectfully submits this **Petition for Exemption and/or Waiver** from the FCC's closed captioning rules, 47 CFR 79.1 et seq., for its weekly Sunday Mass, to be broadcast on a live basis via satellite on AMC1 transponder C9, 103 degrees West, C-band analog transponder 9, Downlink frequency = 3880.00Mhz Horizontal, Standard audio subcarriers, 6.2/6.8 Mhz, and on the various TV Networks, Cable services, and independent stations. The Petition should be granted, not only pursuant to 47 CFR 79.1(d)(5) and (d)(8), but also because compliance with these rules would inflict an "undue burden" on SFC, contrary to 47 CFR 79.1(f)(1) and the public interest.

The FCC's rules expressly recognize that an exemption (or waiver) from the FCC's closed captioning requirements is appropriate in several instances. Specifically, the rules exempt any programming that is distributed "to residential households between 2 a.m. and 6 a.m. local time." See 47 CFR 79.1(d)(5). The Petitioner proposes to commence broadcasting of its Sunday Mass on the satellite during the hour of 8 a.m. to 9 a.m. CST, local (San Antonio) time. The programming transmissions, however, will be received in various time zones other than the San Antonio (Central) time zone, many where it will be prior to 6 a.m. local time. Id. Accordingly, SFC is entitled to an exemption—or at least partial exemption-- for its proposed programming, pursuant to 47 CFR 79.1(d)(5).

The Petitioner also is entitled to an exemption (or waiver) from the FCC's closed captioning rules because its programming (a) will be **LOCALLY PRODUCED** by SFC in San Antonio, and (b) has no "repeat value."

Unlike some “local religious programs” that the FCC occasionally has found not to qualify for an exemption, SFC's programming is precisely the type of locally produced, non-news programming that qualifies for an exemption. See, e.g., Petition for Exemption, filed by the Television Center of the Archdiocese of Miami, December 29, 2005 ("Archdiocese of Miami Petition"). SFC's one-hour Sunday Service will be aired live via the satellite. In such circumstances, a "electronic newsroom" technique of captioning is not available—much less appropriate--and, thus, SFC is entitled to an exemption (or waiver) from the FCC's closed captioning rules pursuant to 47 CFR 79.1(d)(8).

Alternatively, the FCC's Rules also provide for an exemption from the agency's closed captioning rules for any programming for which adherence to those rules would place an “undue burden” on the program producer. See 47 CFR 79.1(f). Indeed, the FCC rules provide specific procedures for program producers to petition the FCC for exemptions based on the “undue burden” standard. Id.

In this case, SFC not only qualifies for an exemption under Sections 79.1(d) (5) and 79.1(d)(8) of the FCC's rules, but also fully meets the FCC requirements for an exemption based on the “undue burden” test because the imposition of the closed captioning requirement with regard to the Sunday Mass would present extremely burdensome difficulties and truly crippling expenses for SFC. First, SFC reasonably estimates that the cost of closed captioning for each Sunday Mass would total at least \$500 per week, or about \$26,000 in 2010 (See Appendix A). That sum would represent approximately 42% of SFC’s annual budget for the Sunday Mass broadcast effort (See Appendix A). Id. Second, an additional \$26,000 closed captioning expense

for SFC's outreach efforts in 2010 would be devastating to SFC and likely would force SFC to cancel entirely the broadcast of the Sunday Mass on the Satellite. Id.

Second, funds simply are not available to be "shifted," either from other SFC programs or from its general revenues, to enable closed captioning of the Sunday Mass. Third, SFC is a self-sustaining Church and cannot look to any other organization for additional funding for the closed captioning of its Sunday Mass. Id. Indeed, it is also relevant that, unlike for-profit programming providers, SFC is a nonprofit, charitable and educational entity that owns no subsidiaries that generate revenues to finance any of its programs, including the Sunday Mass. Id.

Fourth, reasonable alternatives have been considered but absolutely none is financially viable. For example, to broadcast the Sunday Mass in sign language would require—at minimum-- not only an additional camera and expensive additional insertion equipment but also the hiring of at least one technical employee to produce and supervise the sign language insertions in the programming. SFC has access to no (zero) equipment for closed captioning and no other capacity whatsoever to create closed captioning “in house.” Id.

Fifth, a balance of public interest factors also strongly weighs in favor of the FCC's grant of an exemption to SFC under the “undue burden” test. This is the bottom line: without an exemption, the broadcast of the Sunday Mass likely would be cancelled, so that tens of thousands of homebound, elderly and disabled viewers in the United States would be denied weekly access to their Church, to their Catholic religion, to their religious traditions and, effectively, would be denied the opportunity to practice their chosen religion via television.¹ Id. These disenfranchised viewers would include large numbers of disabled, sick and frail elderly

¹ Indeed, the FCC's failure to grant an exemption to SFC under the facts of this particular case arguably would constitute unconstitutional governmental involvement in religious matters.

residents in the United States who cannot otherwise attend any weekly religious services and who will be dependent upon this televised Sunday Mass from SFC to satisfy their spiritual needs.

Id.² In addition, SFC is an ethnically diverse Church, whose outreach to Spanish speaking communities is reflected, among other ways, through the production of a bilingual SFC Sunday Mass.

Apart from the exemption provisions of Sections 79.1(f) of the Rules, SFC alternatively seeks a waiver of the FCC's closed captioning rules, 47 CFR 79.1 et seq., on the basis that the FCC has held in analogous circumstances that non-profit entities are entitled to waivers of certain FCC regulations, especially those rules and regulations that impose financial obligations upon non-governmental entities. For example, non-profit organizations generally are exempt from the FCC's rules and policies involving the payment of annual regulatory/filing fees. A denial of SFC's request for an exemption/waiver of the FCC's closed captioning rules, in these circumstances, would be an arbitrary and capricious departure from FCC precedent and policy. See generally, Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and OTHER SMALL BUSINESSES, FCC 07-181, released December 6, 2007.

Finally, SFC alternatively seeks a waiver of the FCC's closed captioning rules on the basis of the Church's status as a wholly eleemosynary institution that, among its services, produces the TV Mass for broadcast to its congregations. The Church should be relied upon, without unreasonable government interference, to balance the financial resources that it has in choosing how to serve its worshippers, especially the poor and numerous immigrants from Latin

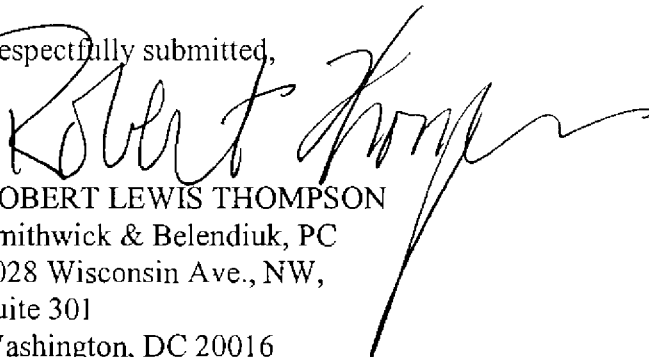
² Homebound viewers will be invited at each televised Sunday Mass to request prayers and other spiritual help from the Church.

America who have moved to San Antonio and, indeed, and to other low income communities throughout the Nation to be served by the satellite-delivered programming.

CONCLUSION

For the foregoing reasons, an exemption from the FCC's closed captioning rules for this weekly program – SFC's Sunday Mass -- is not only warranted but, clearly, such an exemption would best serve the public interest.

Respectfully submitted,



ROBERT LEWIS THOMPSON
Smithwick & Belendiuk, PC
5028 Wisconsin Ave., NW,
Suite 301
Washington, DC 20016
(202) 363-4409
bthompson@fccworld.com

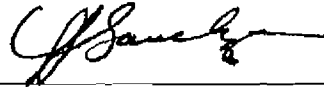
Counsel for SFC

December 23, 2009

APPENDIX A

DECLARATION

I, Louis J. SANCHEZ, a resident of San Antonio, TX, and the Business Manager for the San Fernando Cathedral of San Antonio, Texas, do declare under penalty of perjury that the information provided in the foregoing Petition for Exemption and/or Waiver, is true and complete to the best of my information and belief.

A handwritten signature in cursive script, appearing to read "L. Sanchez", written in black ink.

Louis J. SANCHEZ

December 21, 2009

APPENDIX B

Five Months Operating Statement SFC TV Ministries

| | <u>July</u> | <u>August</u> | <u>September</u> | <u>October</u> | <u>November</u> |
|------------------------------|-----------------|-----------------|------------------|-----------------|-----------------|
| <u>Revenue</u> | | | | | |
| Donations | 4,969.07 | 3,823.00 | 2,419.00 | 4,424.60 | 3,715.25 |
| Other | 144.86 | 314.19 | 269.54 | | |
| Total Revenue | <u>5,113.93</u> | <u>4,137.19</u> | <u>2,688.54</u> | <u>4,424.60</u> | <u>3,715.25</u> |
| <u>Expenses</u> | | | | | |
| <u>Administrative</u> | | | | | |
| Salaries | 1,225.00 | 1,225.00 | 1,225.00 | 1,225.00 | 1,225.00 |
| Payroll Taxes | | | | | |
| Med/Health Ins. | | | | | |
| Retirement | | | | | |
| Rent | | | | | |
| Telephone | | | | | |
| Supplies | | | | | |
| Postage | | | | | |
| Equipment & Maint. | | 311.12 | 300.00 | 372.18 | 240.80 |
| Utilities | | | | | |
| <u>Pastoral</u> | | | | | |
| Printing/Newsletter | | | | | |
| Religious Articles | | | | | |
| Travel | | | | | |
| Other | | | | | |
| <u>Production</u> | | | | | |
| Contract Services | | | | | |
| Weststar Terrestrial | 1,027.00 | 1,136.80 | 1,027.00 | 1,027.00 | 1,136.80 |
| Serenata Expenses | | | | | |
| Satellite Fees | | | | | |
| Uplink | 500.00 | 625.00 | 500.00 | 500.00 | 625.00 |
| Xpndr | 1,600.00 | 2,000.00 | 1,600.00 | 1,600.00 | 2,000.00 |
| Switch | 140.00 | 175.00 | 140.00 | 140.00 | 175.00 |
| Equipment & Maint. | 467.50 | | | | 413.89 |
| Total Expenses | <u>4,959.50</u> | <u>5,472.92</u> | <u>4,792.00</u> | <u>4,864.18</u> | <u>5,816.49</u> |
| Net Income | 154.43 | 1,335.73 | -2,103.46 | -439.58 | -2,101.24 |